

**NEW MEXICO PUBLIC EDUCATION DEPARTMENT
PROCEEDINGS BEFORE THE DUE PROCESS HEARING OFFICER**

A. [REDACTED] F. [REDACTED]

B/N/F CHRISTINE BARELA

Petitioner,

vs.

No. DPH 1112-26

ESPAÑOLA PUBLIC SCHOOLS

Respondent

MEDIATION AGREEMENT

THIS MEDIATION AGREEMENT is made and entered into pursuant to 34 C.F.R. § 300.506 by and among A [REDACTED] F [REDACTED], by her mother ("parent" under the IDEA) Christine Barela, on behalf of A [REDACTED] (collectively referred to as "PETITIONER"), and the Española Public Schools (collectively referred to as "RESPONDENT" or "District") in resolution of all claims between the parties under the Individuals with Disabilities Education Act through the Execution Date of this Agreement.

PETITIONER and RESPONDENT, desiring to resolve all claims under the Individuals with Disabilities Education Act (IDEA) through the Execution Date of this Agreement, agree to the following:

1. PETITIONER and RESPONDENT will attend an Eligibility Determination Team/ Service Plan Team meeting on or before June 4, 2012, to (a) review all evaluations of A [REDACTED], including the evaluation currently being completed by Dr. Diane Thompson, the evaluation of Dr. Lang and the evaluation of Julie Unger Hancock and (b) to identify PETITIONER as a child with Specific Learning Disabilities in the areas of reading comprehension, written expression, and math calculation. PETITIONER expressly agrees that PETITIONER is not seeking to enroll A [REDACTED] in Española Public Schools at this time and is not seeking an IEP from Española Public Schools at this time.
2. PETITIONER represents that she has applied for admission to and been accepted by Victory Faith Academy (Victory Faith), as a parentally-placed private school student (as defined by 34 C.F.R. §300.130) where a Free, Appropriate Public Education (FAPE) is not at issue. As long as Amanda has not enrolled in Española Public Schools, PETITIONER agrees that RESPONDENT is a parentally placed private school student where FAPE is not at issue, and that

RESPONDENT is not responsible for providing a FAPE to A [REDACTED]. However, PETITIONER reserves any right she may have to Proportionate Share Services as a Private School Student, and to the extent PETITIONER is entitled to Proportionate Share Services, RESPONDENT retains the responsibility for providing A [REDACTED] with a Private School Services Plan as a private school student during her attendance at Victory Faith.

3. RESPONDENT agrees to make the following compensatory education program (Compensatory Program) available to A [REDACTED] for so long as A [REDACTED] is enrolled in Victory Faith and residing within the geographical boundaries of the Española Public Schools:

- a. During the summer, 2012, upon enrollment by A [REDACTED] in the summer program at Victory Faith Academy ("Victory Faith"), RESPONDENT agrees to pay A [REDACTED] tuition for such summer program to begin on June 4, 2012 and end on June 29, 2012, in an amount not to exceed Two Hundred Twenty-Five and No/100's (\$225.00) Dollars.
- b. During the summer, 2012, RESPONDENT will make available 1 hour of 1:1 direct, multisensory, systematic, research-driven reading instruction, 4 days a week, for 4 weeks at Victory Faith.
- c. RESPONDENT will reimburse PETITIONER for a one-time application fee of \$100.00 to Victory Faith by remitting payment to Victory Faith within two weeks from the effective date of this Agreement, and when A [REDACTED] enrolls in Victory Faith, RESPONDENT will pay A [REDACTED] tuition at Victory Faith in an amount not to exceed \$225.00 per month for the 2012/2013 through 2015/2016 school years for each month A [REDACTED] attends Victory Faith (excluding summers).
- d. PETITIONER agrees to notify RESPONDENT on or before April 15, 2013, if A [REDACTED] will be attending the summer, 2013, session at Victory Faith. If PETITIONER so notifies RESPONDENT of PETITIONER'S intent to attend the 2013 summer program at Victory Faith, upon enrollment by A [REDACTED] in the summer program at Victory Faith, RESPONDENT agrees to pay A [REDACTED] tuition for such summer program in an amount not to exceed Two Hundred Twenty-Five and No/100's (\$225.00) Dollars.
- e. RESPONDENT will make available to A [REDACTED] direct, multisensory, systematic, research-driven reading instruction one hour per day, four days per week, for four weeks during the summer, 2013. Such services will be provided at either Victory Faith or at another mutually convenient and agreed upon site.

- f. RESPONDENT'S liability for the reading services and all tuition payments referenced in this Agreement are subject to the restrictions and exclusions set forth in this sub-paragraph. Tuition payments will be made directly to Victory Faith only on the following terms and conditions:
- i. A [REDACTED] must be enrolled in and actually attending Victory Faith;
 - ii. Payment will be made directly to Victory Faith;
 - iii. Prior to each payment, PETITIONER agrees to provide RESPONDENT with an invoice for tuition from Victory Faith and an attendance log for purposes of verification of attendance;
 - iv. Payment for the summers, 2012 and 2013 (if applicable), will be made at the beginning of the applicable summer session upon receipt of verification that A [REDACTED] has enrolled in such session;
 - v. Payments during the school year will be made monthly at the beginning of each month;
 - vi. If A [REDACTED] declines to participate in the Compensatory Program or PETITIONER terminates the services once initiated, then RESPONDENT will have satisfied its obligation under this Paragraph 3 and RESPONDENT will be released from any obligation to pay tuition and to provide reading services. The following will constitute refusal or termination of services:
 - a) For the summer reading services, three consecutive absences from reading services provided by the District without 24 hour prior notice to the District's reading instructor;
 - b) For any summer program or any school year, withdrawal by PETITIONER from Victory Faith;
 - c) For any single school year, more than five (5) consecutive unexcused absences; more than ten cumulative days absences in any one four week period without a documented medical excuse; or more than forty (40) cumulative absences in any one school year, whether or not such absences are excused.
 - vii. Additionally, PETITIONER may notify RESPONDENT at any time regarding a decision to terminate services.
- g. RESPONDENT will provide transportation for A [REDACTED] to Victory Faith by bus, or if a viable bus route is not available, PETITIONER agrees to provide transportation for A [REDACTED] to Victory Faith, and

RESPONDENT will reimburse PETITIONER for mileage at the standard District rate for feeder route transportation in effect on the date transportation is provided. RESPONDENT agrees to notify PETITIONER whether RESPONDENT will provide transportation by bus:

- By June 1, 2012, for the summer, 2012 program
- By August 5, 2012, for the 2012/2013 school year
- By June 1, 2013, for the summer, 2013 program (provided PETITIONER has notified RESPONDENT of her intent to enroll A [REDACTED] in the Victory Faith summer program for the summer, 2013)
- Ten business days prior to the start of the 2013/2014 and 2014/2015 and 2015/2016 school years.

Reimbursement will be made monthly within 10 business days from the end of each month for mileage actually incurred. PETITIONER agrees to follow RESPONDENT'S policies and procedures for mileage reimbursement, including providing RESPONDENT a copy of her driver's license, insurance, an attendance log from Victory Faith, and such other documentation as may be reasonably required.

4. RESPONDENT agrees to reimburse PETITIONER's attorney for the independent Diagnostic Evaluation by Julianne Unger Hancock (test dated 4/16/12), to the extent not covered by PETITIONER's insurance, in an amount not to exceed One Thousand, Seventy and No/ 100's (\$1,070.00) Dollars by instrument made payable to Law Office of Debra Poulin. PETITIONER agrees that this payment will constitute payment for an Independent Educational Evaluation (IEE) at public expense pursuant to 34 C.F.R. § 300.502 for the evaluation completed by Dr. Diane Thompson, and that PETITIONER is not entitled to another IEE for Dr. Thompson's evaluation, which is being completed at this time. PETITIONER agrees to provide RESPONDENT with an invoice for Julianne Unger Hancock's assessment, and RESPONDENT agrees to reimburse Law Office of Debra Poulin within 30 days of receipt of such invoice.
5. PETITIONER agrees to release, and does hereby release, RESPONDENT Española Public Schools, including their officials, employees, officers and agents, from any and all claims under the Individuals with Disabilities Education Act (IDEA), including but not limited to any claims for independent evaluations, reimbursement, compensatory services and attorneys' fees, arising from any acts or omissions of RESPONDENT under the IDEA through the Execution Date of this Agreement.
6. This Mediation Agreement shall not be construed as an admission of liability or of any wrongful act or omission by any party, such liability and wrongdoing being expressly denied by RESPONDENT. Rather, PETITIONER and RESPONDENT

mutually acknowledge and represent that this is a compromise in resolution of disputed IDEA claims.

7. Within 30 calendar days of the Effective Date of this Agreement, RESPONDENT agrees to pay the lump sum amount of Thirteen Thousand, Five Hundred and No/100's (\$13,500.00) Dollars for the full release of all PETITIONER's IDEA claims including any claims for attorney's fees and costs (including any attorney's fees and costs necessary to carry out the terms of this Agreement whether incurred prior to or after the execution hereof, the sufficiency of which is hereby acknowledged). Said payment shall be made by instrument made payable to Law Office of Debra Poulin. PETITIONER further agrees to not seek from RESPONDENT reimbursement for attorneys' fees and costs associated with any EDT/IEP/Service Plan Team meetings, if any, (including fees and costs associated with preparing for these IEP Team meetings) held pursuant to the terms of this Settlement Agreement. Except as set forth in this paragraph, the right (if any) to recover fees and costs from RESPONDENT for any services rendered in connection with the terms of this Settlement Agreement are hereby waived by PETITIONER. All fees and costs for services (if any) in connection with the terms of this Settlement Agreement, including fees and costs for PETITIONER'S attorney to attend any EDT/IEP/Service Plan Team meeting shall be borne by PETITIONER. Notwithstanding anything contained in this paragraph PETITIONER is not releasing RESPONDENT from attorney's fees incurred in connection with a breach of this agreement, if any, or any future violations of IDEA.
8. PETITIONER agrees to dismiss with prejudice the IDEA due process proceeding now pending before an independent due process hearing officer for the State of New Mexico, Docket No. 1112-26, within 24 hours from the Execution Date of this Agreement.
9. PETITIONER and RESPONDENT agree that the terms of this Mediation Agreement will remain confidential and will not be disclosed to anyone other than a school official with a legitimate educational interest, those persons with a need to know for implementation (i.e., Victory Faith personnel) or unless disclosure is specifically required by law or is discoverable under any state or federal statute or, subject to the Rules of Evidence and Civil Procedure, in a legal proceeding involving the parties to this Agreement.
10. PETITIONER and RESPONDENT agree that this Agreement becomes effective as of the Execution Date, and the parties understand that this Agreement is binding and enforceable in any State court of competent jurisdiction or in a district court of the United States pursuant to 34 C.F.R. § 300.510(d)(2).

IN WITNESS WHEREOF, the parties have executed this Agreement, to be Effective on the execution date ("Date Signed") as indicated below.

Date Signed: May 16, 2012
("Execution Date")

Signatures:

Christine Barela
Christine Barela, individually and As Next
Friend of Amanda Franco

Representative of Espanola Public
Schools ("EPS") with Decision-Making
Authority on behalf of EPS

APPROVED AS TO FORM AND CONTENT:

Debra Pohlen
ATTORNEY FOR PETITIONER

Stephen Hume
ATTORNEY FOR RESPONDENT

SUPERINTENDENT

Arthur Blea

Email: Arthur.Blea@k12espanola.org

Website: www.k12espanola.org

714 Calle Don Diego

Espanola, New Mexico 87532

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★ Española ★

PUBLIC SCHOOL DISTRICT #55



Reaching for Excellence

BOARD OF EDUCATION

Ralph Medina, President

Lucas Fresquez, Vice President

Annabelle Almager, Secretary

Andrew J. Chavez, Member

Pablo E. Lujan, Member

June 5, 2013

Christine Barela

P.O. Box 97

Medanales, NM 87548

Dear Christine,

In a phone message, you requested that the requirements of the Mediation agreement be changed for this summer. You requested that the 10 hours of tutoring be exchanged for tuition for Summer Session 2, in July 2013, at Victory Faith Christian Academy. Espanola Public Schools agrees to this exchange. This letter serves as documentation of this exchange.

Victory Faith will invoice the district for the summer session.

Please sign and date below and return this letter to me. Both of our signatures are needed to show that we are both in agreement of this.

Congratulations and kudos to [REDACTED] for her academic work and credit recovery efforts this school year. Please contact me at 505-927-7879, if I can be of further assistance.

Respectfully,

Christina C. Baca

Special Education Director

Espanola Public Schools

cc: Randy Martinez, Principal

Evelyn Howard-Hand

Debra Poulin